

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.3463 OF 2018
WITH CA/5220/2018 IN WP/3463/2018**

Bhupendra Shridhar Wani & Ors. ..Petitioners

VERSUS

The State of Maharashtra & Ors. ..Respondents

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Mr. Ajeet B. Kale, Advocate for the Petitioners.

Mr. S. P. Tiwari, AGP for Respondent Nos.1, 2 and 4.

Mr. S. P. Brahme with Mr. S. H. Tripathi, Advocates for Respondent Nos.6 and 7.

Mr. P. R. Patil, Advocate for Respondent Nos.3 and 5.

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**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

Closed for Orders on : 20.12.2018.

Order Pronounced on : 11.01.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioners seek following reliefs in the present writ petition:

(i) To kindly direct the respondents to put reservation of children's park or play ground on Survey No.478/1B/3 plots No.7, 8, 9 and 10 by issuing writ of mandamus or any other writ or order in the like nature;

(ii) To kindly direct the respondents to allow petitioners to raise funds to acquire the plots in question to maintain reservation of children's park by issuing writ of mandamus or any other writ or order in the like nature;

(iii) To kindly direct the respondents to stop the construction going on the plots in question pending hearing and final disposal of this petition by issuing writ or mandamus or any other writ or order in the like nature.

2. Mr. Kale, learned counsel for petitioners strenuously contends that petitioners had purchased the plots in Survey No.478/1B/1, 478/1B/2, 478/1B/3 and 478/1B/4, situated at Telephone Nagar, Jalgaon under registered sale deeds. The petitioners had purchased the plots under the promise that plot nos.7 to 10 in Survey No.478/1B/3, were the open space of the said lay out and were reserved as Site No.162 under the Development Plan published on 15.03.1993. The learned counsel submits that subsequent to the purchase of plots by the petitioners the owner of plot nos.7 to 10 sold the said plots to other persons. The erstwhile owners served purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 upon the respondents-Authorities. No action was taken by the Municipal Corporation for a long time. The subsequent owners filed Writ Petition No.9685 of 2016 before this Hon'ble Court seeking deletion of reservation on plot nos.7 to 10. The said writ

petition was allowed by this Court on 25.04.2017 and it was held that the reservation on the said plot is deemed to have lapsed. After the order is passed by this Court on 25.04.2017 in Writ Petition No.9685 of 2016, the Municipal Corporation granted permission to develop plot nos.7 to 10 and the construction commenced on the plots. The learned counsel submits that the same is against the interest of public at large. Plot Nos.7 to 10 were the only open land in the vicinity providing fresh air to the residents. Plot Nos.7 to 10 were earmarked for children's park. The benefit of ecology and larger interest of the public is required to be considered.

3. The learned counsel further submits that the open spaces, children's park are the lungs of the society. The same have to be maintained. If the Corporation is not acquiring the same, the citizens of the locality can raise funds for acquisition of land by the Government and the petitioners are ready to raise the funds required for the acquisition of the said plots. The learned counsel further submits that, in fact, a fraud is played upon the Municipal Corporation and the public at large by respondents. Initially Gut No.478/1B was totally admeasuring 1.40 hectors. The same was owned by one Mr. Vinay Shah. He obtained permission for lay out of the said land on 31.01.1985 from the erstwhile Municipal Council. The said property was sold by Mr. Vinay Shah to Mr.

Dilip Kolhe, Sunita Rathi and Mr. Madhusudan Kabra by four different registered sale deeds dated 27.02.1987. The said property was divided into Gut Nos.478/1B/1, 478/1B/2, 478/1B/3 and 478/1B/4. It is further submitted that when original lay out was sanctioned on 31.01.1985, reservation was for an area of 1198 sq. meter. After the purchase of the said property by Dilip Kolhe and others, immediately without cancelling the earlier lay out plan, three different applications were submitted on 20.03.1987 by Chandrakant Rathi of Survey No.447/1B/1, which was granted permission on 16.04.1987. Likewise separate applications were submitted for sanction of lay out of Survey No.478/1B/3 by Dilip Kolhe on 23.03.1987. The permission is given by Municipal Council on 29.03.1987. Without showing any open space in all these four parts the lay out is sanctioned by the Municipal Council. In fact there cannot be any permission for lay out without providing open space and that to by the very same owner. As the reservation is shown in Gut Number of Mr. Dilip Kolhe, he filed application on 10.05.1987 to delete the said reservation from the development plan. On 19.01.1988 Municipal Council passed resolution to delete reservation from the development plan. Inpite of the resolution, the Government maintained and sanctioned the revised development plan on 06.01.1993, thereby site no.162 of Survey No.478 is maintained for the reservation.

4. Mr. Kale, learned counsel for petitioners further submits that when it was noticed by the office of Town Planning Department of the State Government and the District Collector about the illegal sanction of the lay out, the enquiry was directed by the Collector and in that enquiry it was revealed that all these lay outs were sanctioned without permission of the authority and without showing open space. The petitioners have received various communications under the Right to Information, which shows that the act done by the owners and the Municipal Council in sanctioning the lay out is in violation of the provisions of law, but no action is taken. When all the attempts failed to get the property released from the reservation, the three owners issued notices under Section 127 of the M.R.T.P. Act. Thereafter, property was sold by Mr. Chandrakant Rathi, Mr. Dilip Kolhe and Mr. Kabra by registered sale deed dated 26.07.2016 to Mr. Rajesh Doshi, Kamchandra Soni and Hemant Depura and after purchase of the said plot they filed a writ petition bearing Writ Petition No.9685 of 2016 for release of the said land from reservation and the said writ petition is allowed. After decision of the writ petition, said property was again sold by them to the present respondent nos. 6 and 7. Infact, it is not considered that the property purchased by these respondents is a part of Gut No.478 and no legal lay out is sanctioned for the said area and without

considering the record they have purchased the property. The entire record clearly reveals that there is fraud played on the residents of the said area as well as Government agencies. The N.A. permission granted to this area is conditional one. The said conditions are flouted. The land is situated in the residential area and the permission is granted by the Authorities for commercial activities which is not permissible otherwise also in view of the provisions of Section 127 of the M.R.T.P. Act. The learned counsel submits that as per Sections 21 and 22 of the M.R.T.P. Act planning is to be made by the Planning Authority and the State Government has to sanction the development plan. The Planning Authority and the State Government are under obligation to see that all public amenities should be provided in the said plan and reservations are separately carved out under Section 22(C) of the M.R.T.P. Act.

5. The learned counsel further submits that the persons who have purchased the disputed property from the original owner are closely associated with the Municipal Corporation. Mr. Ramchandra Soni is one of the purchaser. His son is co-opt member of the Law Committee in the Municipal Corporation, Jalgaon. Since he was aware that purchase notice is received to the Corporation, therefore, they have purchased the property. Thereafter, the property was sold to present respondent nos.6 and 7. Out of that

respondent no.6 Jagannath is Ex. Town Planning Officer serving in Town Planning Office at Jalgaon and Kishor Mahajan is his son. The persons dealing the property are closely associated to the Municipal Corporation and the writ property is not the only property. There are other properties purchased by the persons who are closely associated with Dheeraj Soni. The complaint was filed by one such citizen. Perusal of the complaint reveals that there are serious allegations made against the persons who are involved in the land scam. The Government has taken serious cognizance of the same and has initiated enquiry thereby directing the Commissioner to take appropriate action. The Corporation could have awarded TDR, as is done in other matters, but in the present case nothing of that sort is done. The Corporation in some of the matters has shown their inability to purchase the land by acquisition. In some cases they have taken a stand that the land is required and acquisition proceeding should be initiated. In some cases they have offered the TDR. The Corporation is adopting double standards. Even enquiry is initiated on the basis of complaint of one Akshay Biyani and Atul Mundada. Pursuant to the same police machinery and Government has taken cognizance of the illegalities. However, said Dheeraj Soni has written a letter to the Government and the investigating machinery that they should not conduct any enquiry in the matter. The said

letters are given by Mr. Dheeraj Soni without any authority. Though, the police machinery has intimated to the Corporation about the complaint against Mr. Dheeraj Soni and the serious nature of the complaint, no cognizance has been taken as yet. The appointment of Mr. Dheeraj Soni as a member of Law Committee is in gross violation of Section 31 of the Maharashtra Municipal Corporation Act, 1949. He is neither a law graduate nor a corporator, but he is a businessman and a close relative of the mayor. Illegal activities are being done by Mr. Dheeraj Soni and the corporator. The learned counsel submits that, even, as per the Development Control Rules amended in 2013, the Municipal Corporation can consider the reservation in the context of FSI, TDR to be made applicable to the property. The learned counsel submits that the respondents be restrained from constructing over writ property and Government be directed to place reservation on plot nos.7 to 10. The learned counsel relies on the judgment of the Apex Court in a case of **Raju S. Jethmalani & Ors. Vs. State of Maharashtra & Ors.** reported in (2005) 11 SCC 222.

6. Mr. Bramhe, learned counsel for respondent nos.6 and 7 submits that the writ petition is not maintainable. The petitioners have no *locus standi* to maintain the present writ petition. Their prayers cannot be granted. The present writ petition is not public interest litigation nor review. The orders passed by the

Division Bench on 25.04.2017 in Writ Petition No.9685 of 2016 cannot be overturned in the present writ petition. It is further submitted that the petition is filed with oblique motive. The respondent nos.6 and 7 refused to comply the illegal demand of the councilors. The petitioners have suppressed that open places/garden are available in the vicinity of their plots. The lay outs are sanctioned in the year 1987, the same was never challenged. The properties have changed number of hands. After 30 years, it is impermissible to order enquiry. The petitioners themselves are beneficiaries of the lay out. They have constructed their properties. No illegality or fault can be attributed to respondent nos.6 and 7. They are bonafide purchasers for value. They have spend near about Rs.3.56 crores for the development. The construction is stalled because of the ex-parte order passed by this Court. The land was not acquired, as such after following due procedure it was de-reserved. Reservation again cannot be reimposed. Writ Petition deserves to be dismissed with heavy costs. The learned counsel relies on the following judgments:

(1) Shataram Shankar Jamsandekar & Ors. Vs. State of Maharashtra & Ors. reported in 2015 (1) Mah. L. J. 719.

(2) IDBI Bank Limited Vs. Aditya Logistics (1) Private Limited and Others reported in 2017 (5) Mah. L. J. 69.

(3) Khushbir Singh Basant Sing & Ors. Vs. The State of Maharashtra & Ors. in Writ Petition No.4091 of 2017.

(4) State of Himachal Pradesh and Others Vs. Satpal Saini reported in **2017 AIR (SC) 810.**

7. Mr. P. R. Patil, learned counsel for Municipal Corporation submits that plot nos.7 to 10 were under reservation as per the sanctioned development plan for children's play ground. The Municipal Council, Jalgaon had given lay out permission to Mr. Vinay Shah of Survey No.478/1B on 31.01.1985. In the sanctioned lay out of said plot, open space of area 1415 sq. meter is reserved and reservation is shown. The said lay out was cancelled by the Municipal Council on request of land owner Mr. Vinay Shah on 13.04.1987. After the said land was sold in four parts, the owners of said four parts submitted proposal for lay out sanction and thereafter, the Municipal Council as per the then existing Bye Laws sanctioned lay outs of all four parts. In the lay out sanctioned of Survey No.478/1B/3, plot nos.7 to 10 were shown under reservation for play ground. In the year 1993, the revised development plan of Jalgaon Municipal Council was sanctioned and under the same the writ land was shown for the purpose of children's park, site no.162. The notice under Section 127 of M.R.T.P. Act was issued on 17.04.2008. However, the Corporation could not acquire the land. The same was de-reserved under

the order of this Court in Writ Petition No.9685 of 2016. Thereafter, on 12.10.2017, notification was issued by the State Government in tune with the judgment of this Court in writ petition no.9685 of 2016. On 08.03.2018, construction permission was granted to the owners of the said plot nos.7 to 10.

8. The learned A.G.P. submits that after the land stood de-reserved under order of this Court, necessary notification has been issued. The Planning Authority did not take any steps for acquisition.

9. We have considered the submissions canvassed by the learned counsel for the respective parties.

10. The scope of the writ petition is limited to the extent of seeking directions against the State Government and the Planning Authority to place reservation on plot nos.7 to 10 of Survey No.478/1B/3.

11. The petitioners in memo of petition have averred that the plot nos.7 to 10 of Survey No.478/1B/3 were reserved for children's play ground in the development plan published in the year 1993. The respondents have not disputed the same and have accepted that these plots were reserved in the development plan of year 1993 for children's play ground and prior to that in the development plan of year 1983, the same were reserved for play ground.

12. It is not a matter of dispute that the Planning Authority did not take steps to acquire the reserved land nor to develop it. The erstwhile owners issued notices under Section 127 of the M.R.T.P. Act. In spite of service of notice under Section 127 of the M.R.T.P. Act, the Planning Authority nor the State Government took any steps to acquire the land. Thereafter, the owners of the property at the relevant time filed a writ petition bearing no.9685 of 2016 seeking declaration that the plot nos.7 to 10 of Survey No.478/1B/3 is free from reservation. The Division Bench of this Court allowed the said writ petition under its judgment and order dated 25.04.2017 declaring that the reservation on the said plot nos.7 to 10 stands lapsed. Pursuant to the judgment of this Court, the necessary notification is also issued.

13. It is pertinent to observe that the judgment in writ petition no.9685/2016 dated 25.04.2017 is not subject matter of challenge in the present writ petition. The said judgment has attained finality. Once the said land stand de-reserved and the same is declared so by this Court, then the said land becomes available to the owner for development. As observed supra, the lands have stood de-reserved and after the judgment of this Court necessary notification has also been issued regarding its de-reservation. The land has become available for development. Unless the judgment of this Court is interfered with, the

relief as prayed by the petitioners cannot be granted by this Court.

14. The major plank of the argument of the learned counsel for the petitioners is about the open spaces not being provided and the lay outs dated 29.03.1987 has not been validly granted. The lay out it appears is sanctioned on 29.03.1987. If the sale deed of the petitioner no.1 as filed on record is perused, he has purchased the plot on the basis of the same lay out sanctioned in the year 1987. The petitioners cannot approbate and reprobate. On one hand relying upon lay out sanctioned in the year 1987 the petitioners have purchased the property and at the same time while alleging against respondents they contend the said lay out is not validly sanctioned. The petitioners cannot be allowed to blow hot and cold. If it is accepted that lay out of the year 1987 is not validly sanctioned, then purchase of the property of the petitioners on the basis of the same lay out also would not be legal. Be that as it may, we need not go into the said aspect after the lapse of 30 years. However, if any enquiry has been initiated with regard to the same, it is not for this Court to observe anything in that regard. It is for the competent authorities to proceed in accordance with law as may be permissible.

15. There cannot be any dispute that the open spaces, children's play ground are the lungs of

the city and the amenities have to be provided for. At the same time the lands of the private individuals in the development plan cannot be perpetually and perennially kept under reservation without any development activity. On that count it is said that Section 127 of the M.R.T.P. Act is a fetter on the power of eminent domain. At least since 1983, these writ lands were under reservation. No steps were taken for all the years and the owners issued the notice under Section 127 of the M.R.T.P. Act. No steps for acquisition were initiated as contemplated under law viz. no declaration under Section 126 of M.R.T.P. Act read with Section 6 of Land Acquisition Act, 1894 was issued. In view of the judgment of the Apex Court in a case of **M/s. Girnar Traders Vs. State of Maharashtra & Ors.** reported in (2011) 3 SCC 1, the reservation stands lapsed. This Court considering the said aspects has declared the reservation on the said land to have lapsed in writ petition no.9685 of 2016 under order dated 25.04.2017. As observed supra, the judgment of this Court is not under challenge in the present writ petition nor the same has been challenged by either of the parties before the Apex Court.

16. As far as the complaints against one Mr. Dheeraj Soni and others are concerned, the same is not a subject matter of the present writ petition nor any prayer is made to that effect. If the complaints are filed, the law will take its own

course.

17. In light of the above, no relief can be granted to petitioners as prayed for. Writ Petition as such stands disposed of. No costs.

18. In view of the disposal of the writ petition, nothing survives in the present civil application. Civil Application as such is disposed of. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

18. At this stage the learned counsel for petitioners prays for extension of the interim order passed by this Court earlier. Mr. Brahme, learned counsel for respondents apposes the said request and submits that because of the ex-parte order of the status quo, construction of respondents is stalled since eight months.

19. Considering the fact that the interim order was in force till date, the said interim order is extended for a period of three weeks from today. Needless to state that on lapse of three weeks, the status quo order shall come to an end.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE